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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

B. R. L., a minor, by and through his Guardian)	Case No.
Ad Litem, FRANCESCA LARA;)	
FRANCESCA LARA, an individual; MIGUEL)	NOTICE OF REMOVAL OF CIVIL
LARA, an individual,)	ACTION BY FEDERAL
)	DEFENDANTS

Plaintiffs,

v.

CLINICA SIERRA VISTA; LYNOUS
WILLARD HALL, M.D.; HUNG TRAW
HENRY LUU TRAN, M.D., ADVENTIST
HEALTH BAKERSFIELD; ADVENTIST
HEALTH; ADVENTIST HEALTH
SYSTEM/WEST HPL/GL TRUST; DESIREE
JAYNE DOMINGO LEAL R.N.; MARIAH
EARL, R.N.; KRISTEN MONIQUE WOODS,
R.N.; CLAUDETTE BARRIOS GERONIMO,
R.N.; APRIL MCWILLIAMS, R.N.;
KIMBERLY ANN JENNINGS, R.N.;
KAWALJOT SINGH BAJWA, R.T.; KRISTINA
NOR MAONG, R.N.; GISELLE CHOI, R.N.;
SUDHIR BHIKHUBHAI PATEL, M.D.;
SEONGMI KANG, R.N.; KARLA MERCEDES
PAGAN NESS, R.N.; JENA KAY KOCH,
R.N. and DOES 1 to 100,

Defendants.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF CALIFORNIA:

///

1 PLEASE TAKE NOTICE that the above-captioned action is hereby removed from California
2 State Court to the United States District Court pursuant to 42 U.S.C § 233(c).

3 The United States, through the undersigned attorney, respectfully represents that:

4 1. Defendants Clinica Sierra Vista, Linus Willard Hall, M.D., and Hung Traw Henry Luu
5 Tran, M.D., (hereinafter “defendants”) are named in a civil action now pending in the Superior Court
6 of California for the County of Kern, entitled *B. R. L., a minor, by and through his Guardian Ad*
7 *Lite*m, *Franchesca Lara, et al. v. Clinica Sierra Vista, et al.*, Case No. BCV-20-102537. A copy of
8 the state-court complaint is attached as Exhibit A.

9 2. This state-court action may be removed pursuant to 42 U.S.C § 233(c) for the
10 following reasons:

11 (a) Clinica Sierra Vista is a federally deemed and supported health center and
12 grantee of the United States Department of Health & Human Services by which Linus Willard Hall,
13 M.D., and Hung Traw Henry Luu Tran, M.D., are employed. As such, for purposes of the Federal
14 Tort Claims Act (28 U.S.C. §§ 2671 *et seq.* and 28 U.S.C. § 1346(b)), defendants are deemed federal
15 employees. 42 U.S.C. § 233(g)-(n).

16 (b) Defendants were acting within the scope of this deemed federal employment at
17 the time of the alleged incident. *See* Scope of Federal Employment Certification filed herewith.

18 (c) Under the Federal Tort Claims Act, plaintiff’s exclusive remedy for tort
19 damages allegedly caused by defendants is an action against the United States. 42 U.S.C. § 233(a),
20 (g)-(n).

21 (d) The United States District Courts have exclusive jurisdiction over such tort
22 actions. 28 U.S.C. § 1346(b).

23 (e) No trial has yet been had in state court in this action. *See* 42 U.S.C § 233(c)
24 (Attorney General may remove civil action against deemed federal employee upon scope-of-
25 employment certification at any time before trial).

26 ///

27 ///

28 ///

WHEREFORE, the United States hereby removes the above-described state court action from Kern County Superior Court to this Court.

Respectfully submitted,

Dated: September 28, 2021

PHILLIP A. TALBERT
ACTING UNITED STATES ATTORNEY

/s/ Victoria L. Boesch
VICTORIA L. BOESCH
Assistant United States Attorney
Attorney for the United States

Exhibit A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Scott A. VanWagenen SBN: 182211 DAVIS & VAN WAGENEN 5703 N. West Ave., Suite 100 FRESNO, CA 93711 TELEPHONE NO: 559-438-1030 FAX NO. (Optional): 559-438-1362 E-MAIL ADDRESS (Optional): scott.vanwagenen@davisvanwagenenlaw.com ATTORNEY FOR (Name): BENJAMIN RYAN LARA, FRANCESCA LARA & MIGUEL LARA	FOR COURT USE ONLY ELECTRONICALLY FILED 10/29/2020 1:30 PM Kern County Superior Court By Sophia Munoz Alvarez, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: 1415 Truxtun Avenue CITY AND ZIP CODE: Bakersfield, 93301 BRANCH NAME: Metro Division	
PLAINTIFF: BENJAMIN RYAN LARA, a minor by & through his Guardian Ad Litem, FRANCESCA LARA; FRANCESCA LARA, an individual; and MIGUEL LARA, an individual DEFENDANT: CLINICA SIERRA VISTA; et al.	
<input checked="" type="checkbox"/> DOES 1 TO <u>100</u>	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): PROFESSIONAL NEGLIGENCE - <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death MEDICAL MALPRACTICE <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify): Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	
CASE NUMBER: BCV-20-102537	

1. Plaintiff (name or names): BENJAMIN RYAN LARA; FRANCESCA LARA; and MIGUEL LARA
 alleges causes of action against defendant (name or names): SEE ATTACHMENT 1

2. This pleading, including attachments and exhibits, consists of the following number of pages: 5

3. Each plaintiff named above is a competent adult

a. ☒ except plaintiff (name): BENJAMIN RYAN LARA

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☒ a minor ☐ an adult

(a) ☒ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☐ other (specify):

(5) ☐ other (specify):

b. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☐ other (specify):

(5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: LARA v. CLINICA SIERRA VISTA, et al.

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): CLINICA SIERRA VISTA(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):c. ☒ except defendant (name): ADVENTIST HEALTH(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):

ADVENTIST HEALTH

b. ☒ except defendant (name): BAKERSFIELD(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):

ADVENTIST HEALTH SYSTEM/

d. ☒ except defendant (name): WEST HPL/OL TRUST(1) ☒ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1-25 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 26-50 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☒ Plaintiff is required to comply with a claims statute, anda. ☒ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

SHORT TITLE: LARA v. CLINICA SIERRA VISTA, et al.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
- b. ☒ Professional Negligence-Medical Malpractice
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (specify):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (specify): Any and all Economic and Non-Economic damages as may be proved and for such other and further relief as the Court may deem just and proper.

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: 10/29/2020

Scott A. VanWagenen

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: LARA v. CLINICA SIERRA VISTA, et al.

CASE NUMBER:

ATTACHMENT (Number): 1

(This Attachment may be used with any Judicial Council form.)

ATTACHMENT TO COMPLAINT
PAGE 1 continued

1. Plaintiff (name or names: BENJAMIN RYAN LARA, a minor by and through his Guardian Ad Litem, FRANCHESCA LARA; FRANCHESCA LARA, an individual; MIGUEL LARA, an individual

alleges causes of action against defendant (name or names): CLINICA SIERRA VISTA; LYNIOUS WILLARD HALL, M.D.; HUNG TRAW HENRY LUU TRAN, M.D.; ADVENTIST HEALTH BAKERSFIELD; ADVENTIST HEALTH; ADVENTIST HEALTH SYSTEM/WEST HPL/GL TRUST; DESIREE JAYNE DOMINGO LEAL, R.N.; MARIAH EARL, R.N.; KRISTEN MONIQUE WOODS, R.N.; CLAUDETTE BARRIOS GERONIMO, R.N.; APRIL MCWILLIAMS, R.N.; KIMBERLY ANN JENNINGS, R.N.; KAWALJOT SINGH BAJWA, R.T.; KRISTINA NOR MAONG, R.N.; GISELLE CHOI, R.N.; SUDHIR BHIKHUBHAI PATEL, M.D.; SEONGMI KANG, R.N.; KARLA MERCEDES PAGAN NESS, R.N.; JENA KAY KOCH, R.N. and DOES 1 to 100

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

SHORT TITLE: LARA v. CLINICA SIERRA VISTA, et al.

CASE NUMBER

ATTACHMENT (Number): 2

(This Attachment may be used with any Judicial Council form.)

FIRST CAUSE OF ACTION - PROFESSIONAL NEGLIGENCE - MEDICAL MALPRACTICE
PAGE 1

ATTACHMENT TO: COMPLAINT

GN-1. Plaintiff (name): BENJAMIN RYAN LARA, a minor by and through his Guardian Ad Litem, FRANCESCA LARA; FRANCHESCA LARA, an individual; and MIGUEL LARA, an individual

alleges that defendant (name): CLINICA SIERRA VISTA; LYNOUS WILLARD HALL, MD; HUNG TRAW HENRY LUU TRAN, M.D.; ADVENTIST HEALTH BAKERSFIELD; ADVENTIST HEALTH; ADVENTIST HEALTH SYSTEM/WEST HPL/GL TRUST; DESIREE JAYNE DOMINGO LEAL, R.N.; MARIAH EARL, R.N.; KRISTEN MONIQUE WOODS, R.N.; CLAUDETTE BARRIOS GERONIMO, R.N.; APRIL MCWILLIAMS, R.N.; KIMBERLY ANN JENNINGS, R.N.; KAWALJOT SINGH BAJWA, R.T.; KRISTINA NOR MAONG, R.N.; GISELLE CHOI, R.N.; SUDHIR BHIKHUBHAI PATEL, M.D.; SEONGMI KANG, R.N.; KARLA MERCEDES PAGAN NESS, R.N.; JENA KAY KOCH, R.N. and DOES 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): August 16, 2019

at (place): Adventist Medical Center, 2615 Chest Avenue, Bakersfield, CA 93301

(description of reasons for liability):

I. Defendants, and each of them, were physicians, hospitals, other entities and/or health care providers, duly licensed to practice medicine in the State of California, each holding themselves out to possess that degree of skill, ability and learning common to medical practitioners in the community.

II. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants named as DOES are unknown to Plaintiffs at this time who therefore sue said Defendants by such fictitious names; and will seek leave of Court to ask to amend this Complaint to show the true names and capacities of said Defendants when ascertained. Each Defendant herein designated as a DOES is responsible in some manner for the events and happenings herein alleged and caused Plaintiffs damages and losses proximately, as alleged herein.

III. This action will be based on allegations that Defendants, each and all, negligently monitored, diagnosed, and provided professional services to Plaintiff, FRANCESCA LARA, the mother of Plaintiff, BENJAMIN RYAN LARA, prior to his birth on August 16, 2019, in a professionally negligent manner, which fell below the standard of care.

IV. That at all times herein mentioned, Plaintiff, FRANCESCA LARA, consulted with Defendants, and each of them, for the purpose of obtaining a diagnosis and treatment of an injury, condition and illness, and employed said Defendants, and each of them, to care for and treat Plaintiff and to do those things necessary and proper in said care and treatment. That said Defendants, and each of them, undertook said employment and agreed to do all things reasonably, properly and necessary in connection therewith, and said Defendants, and each of them, thereafter entered into such employment, individually, and by and through their employers, employees, servants and agents.

V. Pursuant to this agreement, Plaintiff, FRANCESCA LARA was examined and underwent monitoring and treatment for prenatal care, labor and delivery, and other diagnostic and therapeutic procedures, and thereafter, continued to be treated and cared for by Defendants, and each of them.

VI. That at all times herein mentioned, Defendants, and each of them, failed to use reasonable care or skill common to medical practitioners in the community and further failed to use reasonable care in the diagnosis and treatment of said condition, illness and injury, and at all times, each of said defendants was acting as the agent of each other Defendant.

VII. Said negligence resulted in physical injuries and emotional distress to FRANCESCA LARA and BENJAMIN RYAN LARA as well as emotional distress to MIGUEL LARA, husband to FRANCESCA LARA and father to BENJAMIN LARA. Further, the negligence of Defendants, and each of them, was a substantial factor in causing these damages.

VIII. Detriment and loss sustained by Plaintiffs, BENJAMIN RYAN LARA, FRANCESCA LARA and MIGUEL LARA includes, but is not limited to, medical and related expenses, past, present and future, loss of earning capacity, pain, suffering, emotional distress and impairment of enjoyment of life, grief and anxiety.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)